

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 14-95:

HOTEL EMPLOYEES AND RESTAURANT)	
EMPLOYEES INTERNATIONAL UNION)	
LOCAL 427, AFL-CIO,)	
)	
Petitioner,)	
)	FINDINGS OF FACT;
vs.)	CONCLUSIONS OF LAW;
)	RECOMMENDED ORDER
MONTANA FEDERATION OF STATE)	
EMPLOYEES, WARM SPRINGS)	
INDEPENDENT UNION NO. 5070,)	
MFT, AFT, AFL-CIO,)	
)	
Petitioner	

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I. INTRODUCTION

On March 6, 1995, Hotel Employees and Restaurant Employees International Union (HERE), Local 427 filed a petition for unit clarification seeking to add one new custodial position No. 32281 to the Food Service Unit. Prior to action by the Board, Montana Federation of State Employees, Warm Springs Independent Union Local No. 5070, MFT, AFT, AFL-CIO petitioned the Board contending the position 32281 should be included in their respective bargaining unit.

The matter was transferred for hearing to the Legal Services Division Hearing Unit. At a telephone pre-hearing conducted May 19, 1995, the parties agreed to submission of the

conflict for decision based upon concurrent offer, postmarked May 31, 1995, of respective party documents and memorandum of argument.

Based upon information and arguments submitted, the below-signed Hearing Officer makes the following findings of fact, conclusions of law, and recommended order.

II. FINDINGS OF FACT

1. The position involved in this matter, Position No. 32281, performs primarily (90%) custodian work duties. These duties were formerly performed by one or several "detailed"/food service worker II(s) and the position was formerly included in the HERE unit, Local 427. The work duties currently include cleaning and maintaining: dining room area; dining room bathrooms; dining room floors and windows as well as wiping dining room tables after meals. The custodial duties assigned to "detail" positions were reassigned to Position 32281 and the position title changed from "detail"/food service worker II to "Residential Custodian". On weekends, relief work for Position 32281 is performed by food service workers represented by HERE, Local 427 not by other housekeeping custodian staff. The incumbent in this position works and takes breaks at the same time and location as other food service staff. The "detail"/food service worker II(s) performing the custodial

duties were formerly supervised by a food service department supervisor.

2. The Collective Bargaining Agreement pertaining to Warm Springs Independent Union Local 5070, MFT, AFT, AFL-CIO recognizes Local 5070 as the sole and exclusive bargaining agent for "custodians". Based upon this recognition clause, covering custodians at Montana State Hospital, Local 5070 believes the position should be included in their unit. This position is taken while admitting the work duties have historically been performed by employees who are members of HERE, Local 427.

III. CONCLUSIONS OF LAW

1. The Board of Personnel Appeals has jurisdiction in this matter pursuant to Section 39-31-202, MCA. Billings, Montana v. Fire Fighters Local 529, 131 LRRM 3324, 651 P.2d 627, Montana Supreme Court, 1982. The Montana Supreme Court has approved the practice of the Board of Personnel Appeals in using Federal Court and NLRB precedence as guidelines in interpreting the Public Employees Collective Bargaining Act (the Act) as the State Act is so similar to the Federal Labor Management Relations Act (LMRA). State Department of Highways v. Public Employees Craft Council, 165 Mont. 349, 529 P.2d 785 (1974), 87 LRRM 2101; AFSCME Local 3290 v. City of Billings, 171 Mont. 20, 555 P.2d 507, 93 LRRM 2753 (1976); State ex rel. Board of Personnel Appeals v. District Court 183 Mont. 223, 598 P.2d

1117, 103 LRRM 2297 (1979); Teamsters Local 45 v. State ex rel. Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young (Young III), 221 Mont. 13, 683 P.2d 185, 119 LRRM 2682 (1984).

2. Section 24.26.611 ARM (1993) provides:

APPROPRIATE UNIT (1) In considering whether a bargaining unit is appropriate, the Board shall consider such factors as:

- (a) community of interest;
- (b) wages;
- (c) hours;
- (d) fringe benefits and other working conditions;
- (e) the history of collective bargaining;
- (f) common supervision;
- (g) common personnel policies;
- (h) extent of integration of work functions and interchange among employees affected; and
- (i) desires of the employees.

As indicated above, the determination as to the appropriate bargaining unit is based upon community of interest, wages, hours, fringe benefits, working conditions, the history of collective bargaining, common supervision, common personnel practices, the extent of work function integration, and the desire of effected employee.

3. The Petitioner Local 5070 presented no arguments specifically regarding community of interest, fringe benefits, history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, or commonality of other

working conditions. Community of interest among employees has, and continues to be, the fundamental factor in determining the appropriateness of bargaining units. Brown & Root, Inc., 258 NLRB 1002, 108 LRRM 1188 (1981). The Custodial Position may have basic day-to-day custodial duties which are similar to other custodial positions. The thrust of the position is to support the food service work or department. The focus of the community of interest factor lies with the involvement in the food service not with the position's custodial type work duties. Significant weight is given to the prior bargaining history factor for inclusions/exclusions to bargaining units. Dallas Morning News, 285 NLRB No. 106, 126 LRRM 1346 (1987). In this matter, the custodial duties have historically been included in the HERE Local 427 bargaining unit.

4. The record presented shows the work performed by the position identified in this case has a community of interest with all food service workers. If placed in either unit, the wages would be determined by the respective collective bargaining agreement. The hours of work for the food service custodian would coincide, in general terms, to the hours of other food service workers. The history of collective bargaining relating to the work duties of this position show the work duties have been performed by members of the HERE unit. The integration of work functions among food workers and the

food area custodian would follow normally from working with other food service employees in the same area performing, in general, food service related activities. No information was offered by either party relating to the desires of the incumbent in this position.

5. The Collective Bargaining Agreement of the Warm Springs Independent Union Local 5070 does particularly identify custodians as appropriate members of that bargaining unit. The community of interest, wages, fringe benefits, common supervision and integration of work functions would to some extent be the same between members of the Warm Springs Independent Union Local 5070. The record offered, however, indicates a higher degree of commonality between the food service workers and the food service area custodian position. Additionally, integration of the work functions and the past collective bargaining history favors assignment of this position to the HERE Unit, Local 427.

6. Under application of the factors as addressed above, the position of Food Service Custodian No. 32281 at Montana State Hospital Warm Springs is found properly included in the HERE Local 427.

IV. RECOMMENDED ORDER

It is HEREBY RECOMMENDED the Custodian Position No. 32281 be immediately included in the unit comprised of the members of HERE Local 427.

SPECIAL NOTE: Pursuant to ARM 24.26.215, the above RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless written exceptions are filed within twenty (20) days after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER upon the parties.

ENTERED AND DATED this _____ day of June, 1996.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

Joseph V. Maronick
Hearing Officer

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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day served upon the following parties or such parties' attorneys of record by depositing the same in the U.S. Mail, postage prepaid, and addressed as follows:

Secky Fascione, Union Representative
Hotel & Restaurant Employees and Bartenders Union
208 East Main Street
Missoula, MT 59802

Bill Bentley
Montana Federation of Hotel Care Employees, AFL-CIO
810 Hialeah Court
Helena, MT 59601

Mike Haldane, President
Warm Springs Independent Union MFT, AFT, AFL-CIO
% Montana State Hospital
Warm Springs, MT 59756

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day, served upon the following parties or such parties' attorneys of record by means of the State of Montana's Deadhead mail service.

Steve Johnson, Chief
Labor Relations Bureau
State Personnel Division
Dept of Administration
Room 130 - Mitchell Bldg
Helena, MT 59620

DATED this _____ day of June, 1996.